

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

STATE OF OKLAHOMA,)	
)	
Plaintiff,)	
)	
v.)	Case No. 4:05-cv-00329-JOE-SAJ
)	
TYSON FOODS, INC., et al.,)	
)	
Defendants.)	

**STATE OF OKLAHOMA'S REPLY BRIEF IN SUPPORT OF ITS
MOTION FOR LEAVE TO FILE A SUPPLEMENTAL BRIEF IN
OPPOSITION TO TYSON FOODS, INC.'S MOTION TO DISMISS
COUNTS 4-10 OF THE FIRST AMENDED COMPLAINT**

COMES NOW Plaintiff, the State of Oklahoma, ex rel. W.A. Drew Edmondson in his capacity as Attorney General of the State of Oklahoma and Oklahoma Secretary of the Environment C. Miles Tolbert in his capacity as the Trustee for Natural Resources for the State of Oklahoma under CERCLA ("the State"), by and through counsel, and respectfully submits the following reply brief in further support of its Motion for Leave to File a Supplemental Brief in Opposition to Defendant Tyson Foods, Inc.'s Motion to Dismiss Counts 4-10 of the First Amended Complaint and to reply to new matter raised by Defendant Tyson Foods, Inc. ("Tyson Foods") in its responsive papers. Specifically, the State states as follows:

1. Contrary to Defendant Tyson Foods' assertions, there is no right to have the last word with respect to a motion.
2. Contrary to Defendant Tyson Foods' assertions, the State's proposed supplemental brief is proper and not merely a rehash of previous arguments. Rather, the proposed supplemental brief is made necessary by the repeated incorrect characterizations of both the law

and the State's allegations by Defendant Tyson Foods in its reply brief. The supplemental brief, for instance, sets the record straight, without limitation, as to the following:

- a. Defendant Tyson Foods' incorrect contention in its reply brief that the CWA pre-empts all common law suits against point source pollution;
- b. Defendant Tyson Foods' incorrect contention in its reply brief that the CWA pre-empts the application of affected state law to interstate non-point source pollution;
- c. Defendant Tyson Foods' incorrect contention in its reply brief that the CWA gives the EPA regulatory authority over non-point source pollution;
- d. Defendant Tyson Foods' incorrect contention in its reply brief that the CWA requires the states to regulate non-point source pollution;
- e. Defendant Tyson Foods' incorrect contention in its reply brief that the provisions of the CWA pertaining to the development of Total Maximum Daily Loads ("TMDLs") and water quality standards constitute a mandatory, comprehensive regulatory scheme;
- f. Defendant Tyson Foods' incorrect contention in its reply brief that section 319(g) interstate management conferences under the CWA are mandatory;
- g. Defendant Tyson Foods' incorrect contention in its reply brief that the fact that the State has voluntarily chosen to take steps to enact state law to regulate non-point source pollution somehow triggers federal pre-emption;
- h. Defendant Tyson Foods' incorrect contention in its reply brief that the dormant Commerce Clause carries with it the right to create a nuisance;
- i. Defendant Tyson Foods' incorrect contention in its reply brief that its due process and sovereignty concerns are not adequately addressed through choice of law principles;

and

j. Defendant Tyson Foods' incorrect contention in its reply brief that its actions are legal and lawful.

Accordingly, the State submits that its proposed supplemental brief will indeed assist the Court in understanding and resolving the issues before it. The stridency with which Defendant Tyson Foods opposes the State's Motion for Leave simply underscores this fact. Defendant Tyson Foods would plainly like the incorrect contentions of its reply brief to stand uncorrected. That, however, would not serve the interests of justice.

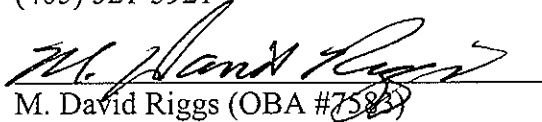
3. Contrary to Defendant Tyson Foods' assertion, the State's Motion for Leave accurately recited that Defendant Tyson Foods objected to the filing of a supplemental brief by the State. The State was under no obligation to recite a counter-proposal advanced by Defendant Tyson Foods that the State had rejected, and that merely reflected Defendant Tyson Foods' unfounded belief that it was entitled to the last word. Further, Defendant Tyson Foods' request to file its own supplemental brief, unlike the request of the State, is unsupported by any articulated need, other than to in fact have the last word. Consequently, since Defendant Tyson Foods does not articulate any need for a response, the Court should conclude the State's supplemental brief creates no need for further clarification by Defendant Tyson Foods.

4. Allowing the State's supplemental brief to be filed is within the Court's discretion. *See* LCivR 7.1(h). The fundamental issue presented is whether the supplemental brief assists the Court in understanding and resolving the issues before it. The State respectfully submits that its supplemental brief will assist the Court and should be permitted to be filed and considered.

WHEREFORE, this Court should grant the State's Motion for Leave to File a Supplemental Brief in Opposition to Tyson Foods, Inc.'s Motion to Dismiss Counts 4-10 of the First Amended Complaint.

Respectfully Submitted,

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January 10, 2006.

CERTIFICATE OF SERVICE

I hereby certify that on January 10, 2006, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing. Based on the electronic records currently on file, the Clerk of Court will transmit a Notice of Electronic filing to the following ECF registrants:

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A handwritten signature in black ink, appearing to read "M. David Regan", is written over a horizontal line.